

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FERMIN JULIO CIFUENTIS MONZON, individually
and on behalf of all others similarly situated,

Plaintiffs,

-against-

INSPECTIONALERT.COM d/b/a INSPECTION ALERT
MANAGEMENT and ISRAEL RODITI, individually,

Defendants.

Docket No.: 22-cv-01476 (EK-SIL)

ANSWER TO COMPLAINT

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DEFENDANTS, INSPECTIONALERT.COM d/b/a INSPECTION ALERT
MANAGEMENT and ISRAEL RODITI, individually, (collectively “Defendants”), by and through
their attorneys, the Law Offices of Jason L. Abelow, P.C., answers the Complaint as follows:

1. The allegations in paragraph 1 of the Complaint are not a pleading requiring a response as they contain information on Plaintiff’s counsel and the nature of his knowledge. To the extent a response is required, Defendants deny the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
2. The allegations in paragraph 2 of the Complaint are not a pleading requiring a response as they contain Plaintiffs’ description of the Fair Labor Standards Act (FLSA) action he seeks to pursue individually. To the extent a response is required, Defendants deny the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.

3. The allegations in Paragraph 3 of the Complaint are not a pleading requiring a response as they contain a description of damages Plaintiff seeks to pursue individually. To the extent a response is required, Defendant denies the allegations in that paragraph or that it engaged in any conduct giving rise to a claim for relief.

AS TO JURISDICTION AND VENUE

4. Defendant makes no response to the allegations in paragraph 4 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
5. Defendant makes no response to the allegations in paragraph 5 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
6. Defendant makes no response to the allegations in paragraph 6 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
7. Defendant makes no response to the allegations in paragraph 7 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to

conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.

AS TO THE PARTIES

8. Defendant lacks knowledge or information sufficient to ascertain the truth of paragraph 8 of the Complaint.
9. Defendant admits the allegations in paragraph 9 of the complaint, upon information and belief.
10. Defendant admits the allegations in paragraph 10 of the complaint, upon information and belief.
11. Defendant admits the allegations in paragraph 11 of the complaint, upon information and belief.
12. Defendant denies the allegations in paragraph 12 of the complaint, upon information and belief.
13. Defendant admits the allegations in paragraph 13 of the complaint, upon information and belief.
14. Defendant admits the allegations in paragraph 14 of the complaint, upon information and belief.
15. Defendant admits the allegations in paragraph 15 of the complaint, upon information and belief.
16. Defendant admits the allegations in paragraph 16 of the complaint, upon information and belief, except that Roditi's power was not "exclusive". Plaintiff had power to hire and fire employees.

17. Defendant admits the allegations in paragraph 17 of the complaint, upon information and belief, except that Roditi's power was not "exclusive". Plaintiff had power to hire and fire employees.
18. Defendant admits the allegations in paragraph 18 of the complaint, upon information and belief, except that Plaintiff set schedules and supervised the employees.
19. Defendant makes no response to the allegations in paragraph 19 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
20. Defendant makes no response to the allegations in paragraph 20 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
21. Defendant makes no response to the allegations in paragraph 21 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.

AS TO FACTUAL ALLEGATIONS

22. Defendant denies the allegations in paragraph 22 of the Complaint, except admits that Plaintiff was an employee of INSPECTIONALERT.COM.

- 23. Defendant denies the allegations in paragraph 23 of the Complaint.
- 24. Defendant denies the allegations in paragraph 24 of the Complaint.
- 25. Defendant denies the allegations in paragraph 25 of the Complaint.
- 26. Defendant denies the allegations in paragraph 26 of the Complaint.
- 27. Defendant denies the allegations in paragraph 27 of the Complaint.
- 28. Defendant denies the allegations in paragraph 28 of the Complaint.
- 29. Defendant denies the allegations in paragraph 29 of the Complaint.
- 30. Defendant denies the allegations in paragraph 30 of the Complaint.
- 31. Defendant denies the allegations in paragraph 31 of the Complaint.
- 32. Defendant denies the allegations in paragraph 32 of the Complaint.
- 33. Defendant denies the allegations in paragraph 33 of the Complaint.
- 34. Defendant denies the allegations in paragraph 34 of the Complaint.
- 35. Defendant denies the allegations in paragraph 35 of the Complaint.
- 36. Defendant denies the allegations in paragraph 36 of the Complaint.

AS TO COLLECTIVE ACTION ALLEGATIONS

- 37. Defendant lacks knowledge or information sufficient to form a belief as to Paragraph 37 of the Complaint.
- 38. Defendant makes no response to the allegations in paragraph 38 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
- 39. Defendant denies the allegations in paragraph 39 of the Complaint.
- 40. Defendant denies the allegations in paragraph 40 of the Complaint.

- 41. Defendant denies the allegations in paragraph 41 of the Complaint.
- 42. Defendant denies the allegations in paragraph 42 of the Complaint.
- 43. Defendant denies the allegations in paragraph 43 of the Complaint.
- 44. Defendant denies the allegations in paragraph 44 of the Complaint.
- 45. Defendant denies the allegations in paragraph 45 of the Complaint.
- 46. Defendant denies the allegations in paragraph 46 of the Complaint.
- 47. Defendant denies the allegations in paragraph 47 of the Complaint.
- 48. Defendant denies the allegations in paragraph 48 of the Complaint.

AS TO THE FIRST CAUSE OF ACTION

- 49. Defendant incorporates its responses to the foregoing paragraphs of the Complaint as if fully set forth herein.
- 50. Defendant lacks knowledge or information sufficient to ascertain the truth of the allegations in paragraph 50 of the Complaint.
- 51. Defendant makes no response to the allegations in paragraph 51 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
- 52. Defendant makes no response to the allegations in paragraph 52 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.

53. Defendant makes no response to the allegations in paragraph 53 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
54. Defendant denies the allegations in paragraph 54 of the Complaint.
55. Defendant makes no response to the allegations in paragraph 55 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.

AS TO THE SECOND CAUSE OF ACTION

56. Defendant incorporates its responses to the foregoing paragraphs of the Complaint as if fully set forth herein.
57. Defendant makes no response to the allegations in paragraph 57 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
58. Defendant makes no response to the allegations in paragraph 58 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.

59. Defendant makes no response to the allegations in paragraph 59 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.

AS TO THE THIRD CAUSE OF ACTION

60. Defendant incorporates its responses to the foregoing paragraphs of the Complaint as if fully set forth herein.
61. Defendant makes no response to the allegations in paragraph 61 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
62. Defendant denies the allegations contained in paragraph 62 of the Complaint.

AS TO THE FOURTH CAUSE OF ACTION

63. Defendant incorporates its responses to the foregoing paragraphs of the Complaint as if fully set forth herein.
64. Defendant makes no response to the allegations in paragraph 64 of the Complaint as they call for a conclusion of law and therefore no response is required. To the extent a response is required, Defendant denies the allegations in that paragraph insofar as they relate to conduct allegedly engaged in by Defendant or that it engaged in any conduct giving rise to a claim for relief.
65. Defendant denies the allegations contained in paragraph 65 of the Complaint.

AS TO PRAYER FOR RELIEF

66. Defendant denies that Plaintiff is entitled to any relief in this matter, including the relief sought in subdivisions (a) through (e) of the “WHEREFORE” clause.

AFFIRMATIVE AND OTHER DEFENSES

Without assuming the burden of proof for any matter/issue not imposed by law on it,

Defendant asserts the following affirmative defenses to Plaintiffs’ claims asserted against it:

1. Plaintiff was an exempt employee.
2. Plaintiff was a manager.
3. Plaintiff lacks standing to bring the instant action.
4. The Complaint, in whole or in part, fails to state a claim upon which relief may be granted.
5. Plaintiffs’ claims against Defendant are barred in whole or in part by the applicable statute(s) of limitations.
6. Plaintiff is not similarly situated to any other employee because Plaintiff was the manager.
7. Plaintiff was paid all wages due him when they were due.
8. Plaintiffs’ claims against Defendant are barred in whole or in part by the doctrines of laches, waiver, consent and/or estoppel.
9. Defendant acted in good faith and without malice, willfulness, or evil intent.
10. Defendant paid Plaintiffs in full and in a timely manner the compensation owed for all hours worked.
11. Defendant provided Plaintiffs with any wage notices required by law, and/or with the information required to be included in any such wage notice, in a timely manner. As such, Plaintiffs were on actual and constructive notice of the information required to be included in any such wage notice.

12. Plaintiffs are not entitled to damages due to an alleged failure to provide wage notices under NYLL § 195 because they were not “hired” by Defendant after the date on which the NYLL’s Wage Theft Prevention Act went into effect within the meaning of the relevant law.
13. To the extent Defendant failed to comply with statutory notice requirements, which is expressly denied and not admitted, Plaintiffs are not entitled to any damages because, among other reasons, Defendant made complete and timely payment of all wages due.
14. To the extent Defendant failed to comply with statutory notice requirements, which is expressly denied and not admitted, Plaintiffs are not entitled to any damages because, among other reasons, Defendant reasonably believed in good faith that it was not required to provide such notices.
15. Plaintiffs cannot establish or maintain a class action because they do not satisfy all of the requirements of Rule 23 of the Federal Rules of Civil Procedure.

In addition to the defenses stated above, Defendant reserves the right to assert any and all additional legal and/or equitable defenses that may become apparent during the course of discovery and/or trial.

WHEREFORE, Defendants demand judgment in their favor and against Plaintiff as follows:

- a. Dismissing the Complaint with prejudice and denying each and every request for relief set forth therein; and

b. Awarding Defendants such further relief as the Court deems just, equitable and proper, together with costs and disbursements and attorneys' fees, if appropriate.

Dated: Garden City, New York
June 13, 2022

LAW OFFICES OF JASON L. ABELOVE, P.C.

By: 

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